# VAN STENDAL **DEPOSITION**

1 A. Absolutely.

- Q. Now, that exhibit lists several infractions of the ELM, is that right?
- A. I don't know that it lists infractions. It lists sections from the ELM.
- Q. Well, is the basis for the removal those sections of the ELM?
  - A. Yes.
- Q. And could you describe in your own words what conduct by Melinda Wilson you felt justified her removal from the Postal Service?
- A. Well, in particular, that if you are in a sick-leave status, then you should not be gainfully employed outside the Postal Service. In particular, the biggest incident for me was leaving work at three o'clock on a particular day and requesting sick leave and going to work at Boscov's at 3:18 on that same day.
  - Q. Do you know what day that was?
- A. If I can look at the documents --
- Q. Okay. Sure.
- A. That would be on December 12th of 2003.
  - Q. And when did you come to learn that Ms. Wilson took sick leave at three o'clock and went to Boscov's



- Q. Is that a fair statement of what she did wrong?

  MS. HANNIGAN: Objection to the form of
  the question. I don't think the witness has said
  that's the only thing she did wrong. But you can
  answer the question.
- A. I don't think I really understood. It went in a couple of different directions.
- Q. I'm sorry. Let me see if I can try that again.

  Would it be fair to say that, in your

  opinion, what Ms. Wilson did wrong that caused the

  Postal Service to seek her removal was working in an

  outside job while she was on sick-leave status on

  particular days?
  - A. Those are part of the factors, yes.
  - Q. Tell me what the other factors were?
- A. The other factors were, as we were going through this whole investigation, a reluctance on Ms. Wilson's part to provide information when it was requested in different interviews.
- Q. Let me stop you there for a moment. What information did you request her to provide and what was the response?
  - A. On which occasion?
  - Q. Well, let's start chronologically. When was



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the earliest time you asked Ms. Wilson to provide you with information about her employment at Boscov's?

- On December 24th of 2003. Α.
- ο. Now, prior to December 24th, 2003, were you aware personally, personal knowledge from wherever it came from that she was working at Boscov's?
  - Α. Yes.
- And how did you come to know that? Q. you know that?
- My initial way of knowing it was through supervisor Linda Drummer. It was sometime late November, early December. I don't know the exact day, but she came in and told me she was out holiday shopping and had witnessed Ms. Wilson working at Boscov's.
  - Now, when you spoke to Linda Drummer about this or when she told you about this, did you say anything to her or express some concern that Ms. Wilson was doing something wrong?
  - A. I expressed concern that it appeared that the work that she was doing at Boscov's violated the medical restrictions she had provided to the Postal Service.
    - Q. And did you ask Ms. Drummer to do anything to



- 1 | follow up on this information she gave you?
- A. I asked her to ask for updated medical documentation from Ms. Wilson.
  - Q. Okay. And do you know what the result of that request was?
    - A. Yes. We got updated medical restrictions.
  - Q. Were they different than the restrictions that had been in place before you got the updated restrictions?
    - A. No. They were exactly the same.
  - Q. I understand that on December 24th, Ms. Wilson was called in and told to go home, is that correct?
- A. At the end, yes.
- Q. At the end? That was the outcome of the meeting?
- 16 A. Yes.

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- Q. And could you tell me, did you participate in that meeting?
- 19 A. Yes, I did.
- Q. Can you tell me the purpose of that meeting?

  Start there.
  - A. The purpose of the meeting was to clarify once again her medical status with the Postal Service. She had received information from Shared Services which



either closed or denied, which meant that she was no longer entitled to a limited-duty status. Because I had information that said that she was working at Boscov's, doing work that was directly in opposition to medical information that we had, I wanted that information clarified.

- Q. In your mind, was she entitled or not entitled to limited-duty status in December of 2004?
- A. She was not once we received the information from Shared Services that said all of her claims were either closed or denied.
- Q. So if she were to seek some kind of limited-duty status or some kind of accommodations, she would have to go back to square 1 with a new request?
- A. Right. You can't request limited duty unless you have a valid claim.
- Q. And was that brought to Ms. Wilson's attention at that time at that meeting?
- A. Well, the only way for her to file a new claim would be to file an accident report. So, no.
- Q. My question is, when you sat down with

  Ms. Wilson on December 24th, did you or Ms. Drummer



- say, "Hey, Ms. Wilson, the information we have indicates you're not entitled to light duty status."
  - A. I didn't say she wasn't entitled to light duty status. I said she wasn't entitled to limited-duty status.
    - Q. I'm sorry. Limited-duty status.
    - A. Yes. That was explained to her several times.
    - Q. What did she say?
- A. She said she was entitled to limited-duty status.
- 11 Q. In the context of that, did you confront her
  12 with the Boscov's situation?
  - A. We spoke about that afterwards.
- Q. After you told her to go home?
- 15 A. No.

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- Q. Or during the meeting?
- A. As we talked about the limited-duty status,
- 18 Ms. Wilson continued to say that she was entitled to
- 19 limited duty. She told me that she had a form in her
- locker which would prove to me that she was entitled
- 21 to limited duty, and I allowed her to go get that
- 22 form. However, that form did not prove that she was
- 23 entitled to limited duty.
- Q. How did the Boscov's subject come up?



1	A. At that point, once I explained to her again
2	that she was not entitled to limited duty, I asked her
3	if she was working outside of the Postal Service.
4	Q. And what did she say?
5	A. She refused to answer.
6	Q. Now, you knew she was?
7	A. Yes.
8	Q. Did you tell her, I know you're working at
9	Boscov's?
10	A. Not until after I asked her.
11	Q. Did you eventually during this meeting?
12	A. Then I said I have proof that you are working
13	outside the Postal Service.
14	Q. What did she say?
15	A. She said nothing.
16	Q. Okay.
17	A. And then subsequently, after I asked her about
18	her medical restrictions and that I had information
19	that which the job she was performing at Boscov's was
20	not with the documentation that she had provided
21	us, that she was performing work there that she did
22	not perform for us. She told me that her
23	documentation was only valid for the Postal Service.

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Q.



So basically she was telling you, when I'm on

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1
      my own time, I can do whatever I want to do?
 2
        Α.
              I don't know what she was trying to say.
 3
              Was that your impression?
        0.
 4
        Α.
              She was telling me that her documentation was
 5
      only valid for the Postal Service.
 6
             Now, at that time on December 24th, were you
 7
      aware of the regulation that cited in number 6 about
      no outside employment while on sick leave and it's
 8
 9
      ELM 513.312?
10
                   MS. HANNIGAN: You're referring to Keen
11
      Exhibit 6?
12
                   MR. BERNSTEIN:
                                   Yes.
                                          Keen Exhibit 6.
1.3
      sorry.
14
      BY MR. BERNSTEIN:
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             You had personal knowledge of that?
        0.
16
        Α.
             Yes.
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        0.
             Is that something that comes up a lot?
18
             Not normally.
        Α.
19
             Is it common or unusual for Postal Service
        Q.
20
      employees to have some kind of second job or outside
21
      employment?
22
        Α.
             I can't answer that.
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You don't know? Just anecdotally if you know.

I couldn't say if it's common. I don't know

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Q.

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you know, you have to be careful about outside employment because there are a number of regulations, postal regulations that may get you in trouble? Α. No. Ο. You never said that? Α. No. 0. You sent her home on December 24th? Α. Yes, I did. And the reason was? 0. A. The reason was that at that point, as I stated earlier, she was not entitled to limited duty. would be entitled to light duty, however, because her medical restrictions conflicted with something I knew that she was doing at outside employment. Since her medical restrictions were in question, I sent her home until she provided updated medical documentation. 0. So you sent her home because she was saying, "I have restrictions," and you didn't think she did. Would the alternative be, say, just continue working or you didn't want her to do that? Α. I sent her home because the piece of paper that



she provided to us from her doctor stated that she was

not able to do certain things that I had factual

knowledge that she was performing at another place

- outside of the Postal Service.
  - Q. But was she performing or did she have to perform those things at the Postal Service or not in her job?
    - A. In her normal job?
- Q. Yes.

- A. Yes. She would have had to. However, she was telling me that she was not able to do that.
  - Q. Did she, in fact, do those things or you don't know?
  - A. She didn't do them.
  - Q. So in your mind there was a conflict between what you understood she was doing at Boscov's and what she was doing at the Postal Service?
    - A. There was a conflict between the medical restrictions that she provided to me and what I knew she was doing outside the Postal Service.
    - Q. Now, you mentioned there were other things that Ms. Wilson did that, in your mind, led to her removal. Do you remember that?
    - A. Yes.
      - Q. What were --
  - A. Part of it for me was I have to take into account the overall conduct of an employee and their



overall value to the Postal Service. I had had a prior conversation with Ms. Wilson. She was actually in representing another employee on a different matter. And after that discussion was over, I had asked Ms. Wilson when she was going to return to full duty. And Ms. Wilson told me that she was never going to return to her regular job. She was never going to perform at full duty.

And going back to that conversation and what I knew she was doing at Boscov's, also told me that she was not being particularly honest in my opinion, and honesty is one of the things that we require from a postal employee.

- Q. If the employee tells me, "I'm never going to return to full duty," what's dishonest about that?
- A. Because at the time -- afterwards she was out performing those duties in another place that was not the Postal Service.
- Q. And do you remember when this conversation occurred?
- A. It was several months before like November,

  December. I don't remember exactly what the day was,

  but I know it was a couple of months before, and as I

  said --



- Q. Before December?
- A. Yes.

- Q. Were there any other examples in your mind of dishonest behavior as you characterized it?
- A. No. There were other factors maybe that weren't dishonest. Ms. Wilson had, on occasion, been belligerent with other supervisors and managers which is also something that I took in as a factor because I looked at the overall picture.
- Q. Give me an example of Ms. Wilson being belligerent to other managers.
- A. Ms. Wilson was having a discussion with my back-up manager, who replaces me when I'm not there. And that manager was giving her an instruction and Ms. Wilson chose not to follow that instruction and went off onto the floor against that person's instructions to go find a shop steward, which was not proper. Proceeded to yell on the floor, raise her voice.

She had also put in for a supervisor program, and her manager had at the time did not concur with the evaluation and brought me the paperwork because she had been belligerent with him out on the floor and told him that he needed to check



Α.

also MW 0510, and additionally I don't think the
other pages have been stamped, but it's all stapled
together, and there are a number of requests for
notification of absences attached to that?
MS. HANNIGAN: I believe in the Bates
stamp documentation, these were produced. These all
appear consecutively beginning at about 510 through
516, 17.
Q. First page of Van Istendal Exhibit Number 1
appears to be a letter from a LuAnn Ashmen to a Larry
Bucci. Who is LuAnn Ashmen?
A. She's a postal inspector.
Q. Was she involved in the investigation of
Ms. Wilson to your knowledge?
A. Yes.
Q. Was she the main person who did the
investigation?
A. I don't know.
Q. You don't know. Okay.
Who is Larry Bucci?
A. Larry Bucci is the FMLA coordinator for the
Delaware processing and distribution center.
Q. Can you tell me what an FMLA coordinator is?



I can try.

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       Now, and those correlate with specific requests
for notification on the following pages of that
exhibit. If you want to look that over, check that
out, you certainly can.
            MS. HANNIGAN:
                           Off the record.
             (Discussion off the record.)
             (Pause.)
BY MR. BERNSTEIN:
       Now, this the letter and the FMLA leave
  Ο.
requests that are stapled to that letter, was that
something that was given to you prior to the
preparation of the removal notice?
       I don't remember if this was included in the IM
         I'd have to see it.
or not.
  0.
       Well, going back to the removal notice, it
indicates a number of dates that match up with those
dates --
 Α.
       Right.
       -- where the allegation is that Ms. Wilson was
working at Boscov's on days she took sick leave?
 A.
      Right.
 Q.
       So it would be fair to say that it was
incorporated in the removal?
                              That information --
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The information, yes.

1 Q. -- was incorporated in the removal letter? 2 Α. Yes. 3 0. And do you recognize the handwriting on 4 page 0510, 2 hours, 8 hours, .5 hours? 5 Α. No. 6 0. So your handwriting? 7 Α. No. 8 0. But you don't know whose it is? 9 Α. No. 10 Have you pinpointed any specific time when you 0. learned that Ms. Wilson was working at Boscov's on 11 12 days she had taken sick leave? 13 It would be after December 24th. I can't tell Α. 14 you the exact date. I didn't go back at that point 15 and look for dates. 16 Sometime between December 24th and March 24th 17 when the removal letter was authored? 18 Α. Yes. 19 Now, on December 24th, Ms. Wilson was sent 20 home, right? 21 Α. Yes. 22 And told not to come back until she gets more 23 medical documentation? 24 Α. Yes.

- Q. You're familiar with those phrases?
- 2 A. Yes, I am.

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- Q. For clarity on the record, could you explain what they are and any differences between the two?
  - A. Sure.
  - Q. Thank you.
    - A. Limited duty is extended to someone who has sustained an injury while in employment at the Postal Service. We are required to provide work for someone who has injured themselves in the course of their duty for the Postal Service. Light duty is -- for example, I'm home and I fall down the steps and I break my leg and I'm not able to carry mail. So I'm coming in and requesting light duty. I'm requesting that you give me an assignment that I can perform while I'm incapacitated. I'm not required to provide you light duty, but we should do that to the best of our
      - Q. Ma'am, I want to turn your attention to your Exhibit Number 2, the last two lines. It says a DIC was held on 3/10/04. Is DIC, is that day in court?
    - A. Yes, it is.

ability.

- Q. Can you explain what that is?
- 24 A. A day in court is -- another term for it is a



conduct of the employee in reaching a determination about removal, is that fair?

A. Yes.

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- Q. And you referred to a comment that Ms. Wilson had made to you that she was, quote, never going to return to her job, to full duty, and you indicated on two occasions she had been found to be belligerent while at work?
  - A. Yes.
- Q. And that you considered that as part of the overall conduct of the employee, is that correct?
  - A. Yes.
- Q. And then you were asked whether there was anything in the notice of removal that reflected that and reflected the fact that you considered the overall conduct of the employee, and I'd just like to call your attention in Keen Number 6, which is the notice of removal --
- A. Right.
- Q. -- the bottom of the second page, under the section 666.2, behavior and personal habits. Are there characteristics that are listed in there that you think were relevant to your consideration of the overall conduct of this employee?



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Because to me, when you -- part of it is A. when it says about being honest, being reliable, reliable is someone reporting to work. And when I look at an overall package -- for example, from the investigative memorandum that says that you called out sick today, you worked at Boscov's during the night. You called out sick again the next day. showing me that you are not reliable as a postal employee.

Where it also says that you have to be courteous, I don't consider being belligerent on the floor or telling someone that they need -- a manager that they need to check their attitude as courteous. That's not proper work conduct in my consideration.

- 0. One other issue, the question of whether FMLA leave that Ms. Wilson applied for and was granted was paid leave or not, can you clarify that for us on the record? Was Ms. Wilson, in fact, paid for the time she took off as FMLA leave as noted by the leave slips contained in Van Istendal Number 1?
  - Α. I have to look at these.
- Sure. Q.
- Do you want me to tell you day by day or just Α. in general? For example, the one on November 5th says



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FMLA sick leave. So that would have been paid leave.
 1
      The next one, FMLA sick leave, that's paid leave.
 2
      Sick leave, paid leave. FMLA sick leave, also paid
 3
      leave. FMLA sick leave, paid leave. FMLA sick leave,
 4
      paid leave. FMLA sick leave on the 24th, that's also
 5
      paid leave.
 6
             So I'll note for the record that you've just
 7
        Q.
      gone page by page through Van Istendal number 1 and
 8
      indicated on each occasion listed there, where
 9
      Ms. Wilson applied for and was granted FMLA leave, she
10
      was, in fact, paid for her time that she was out on
11
      sick leave?
12
        A.
13
             Yes.
                  MR. LEFF: Thank you. I have nothing
14
15
      else.
                                                           So
                  MR. BERNSTEIN: Nothing else from me.
16
      we are done.
17
                  MS. HANNIGAN: We'll read and sign,
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19
      please.
                   (Deposition ended at approximately
20
21
      2:30 p.m.)
22
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UNITED STATES POSTAL INSPECTION SERVICE

### PHILADELPHIA DIVISION

February 17, 2004

Larry Bucci
Time & Attendance Manager
P.O. Box 10000
Wilmington, DE 19850

I am conducting a criminal investigation on Melinda Wilson (SSN 221-52-2808) a mail processor at the Delaware P&DC. I would like to request Ms. Wilson's FMLA Certification verification for FMLA sick leave for the following dates:

V November 5, 2003 — 2 hrs.

December 5, 2003 — 8 hrs.

December 12, 2003 — 50 hrs.

December 17, 2003 — 4 hrs.

December 18, 2003 — 8 hrs.

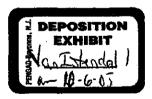
December 19, 2003 — 8 hrs.

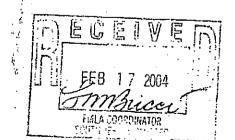
December 20, 2003 — 8 hrs.

December 24, 2003 — hrs.

The request for this information should be kept confidential in order not to obstruct this investigation. If you need more information from me, contact me at (215-895-8469).

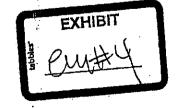
LuAnn Ashmen Postal Inspector





PO BOX 7500 PHILADELPHIA PA 19101-9000 TELEPHONE 215-895-8450 FAX: 215-895-8470

UNITED STATES POSTAL SERVICE	Request for	r or Notification	on	Φf	At	sen(
Employee's Name (Lest, First, M.L.)  WISON Mel Inda G 72 6728	Date Submitted	No. of Hours Requested	reduled	Co- beduled		Yes 3
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Time of Call or Request Scheduled Reporting Time Employee Can Be Res	ached At (If needed)	Thru Date Hour		_	Sun	
17,00	☐ No Cali	11-5 1550			02	.
Type of Absence Documentation (For official use only)	Revised Schedule for (Date)	Approvad in Advance			Mon	
Annual For FMLA Leave (Certification reviews)		Yes No	$\vdash$		Ç3 Tue	
Carrier 701 Rule For COP Leave (CA1 on file)					04	
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Employee's Signature and Date / / / /5/55 Signature of Person Recording Absence	and Date Signature of Superv	isor and Date Notified			10	
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Official Action on Application (Return copy of signed request	to employee)				11 Wed	
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(See Publication 71) Documentation Noted on F		11-6-03	$\Box$		Thur	
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Ineligible for FMLA (Estimate eligibility data):	Contin	ued on Réverse			Fri 14	
PS Form <b>3971</b> , April 2001 (Page 1 of 2) Wa	ining: The furnishing of false I than \$10,000 or impriso	nformation on this form may nment of not more than 5 ye	resul	it in a	fine of th. (18	not more U.S.C. 10



POSTAL SERVICE
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## Request for or Notification of Absence

Employee's Name (Lust, firs WILSON, MELINDA G	t, M.I.)	Social Security 221-52-2808	No.	Date Submi		No. of Hou	rs Requested	1_		PP	1	Year
Installation (For PM leave, 1 09-682) - DELAWARE P&D	how city, state and ZIP code) F	1	N/S Day	Pay Loc. #		From Date 12/05/200	Hour	Scheduled	Un- Scheduled	26		2003
Time of Call or Request	Scheduled Reporting Time	Employee Can	Ba B soubad At	<u> </u>	<del></del> -			<u>ĕ</u>		4 <del></del>	Init,	Hours
06:09	07:00		) 395-4854		J No Call	Thru Date 12/05/200	Hour 3   15:30	_	,.	SAT	<u> </u>	<u> </u>
Type of Absence	Documentation (For official use only		Revised S	Schedule for (		Approved	n Advance	1		SUN		}
☐ Annual	For FMLA Leave (Certification For COP Leave (CAI on file)	n reviewed	/ <u> </u>			∏ Yes	□ No		\$44; \$12	MON		
Carrier 701 Rule	For Advanced Sick Leave (122	l on file)	Begin W	/ork				<b>]</b> —	1	TUE	<del>                                     </del>	<del></del>
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NOT IOD; FMLA LEAVE								<u> </u>	+-	SAT	1	<del></del>
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PS Form 3971. April 2001 (Reverse)

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Time of Call or Request 07:21	Scheduled Reporting Time 97:00	Employee Cas Be (302) 39		(If needed)	Thru Date 12/19/200	Hour 3 15:30	7 1 5 2 -2 3 2	12	SAT	lait.	Hours
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## Request for or Notification of Absence

Employee's Name (Last, first WILSON, MELINDA G		Social Security N 221-52-2808			ubmitted 2/20/2003	No. of Hours Requested 8,00	THE STATE OF	Scheduled	PP 1		Year 2004
Installation (For PM leave. 3 19-6821 - DELAWARE P&D	how city, state and ZIP code) F		N/S Day	Pay Li 215		From Date - Hour 12/20/2003 07:00	3	She	Day	Init.	Hours
Time of Call or Request	Scheduled Reporting Time 07:00	Employee Can B (302)	e Reached A 395-4854	i (If need	ed) . No Call	Thru Date Hour 12/20/2003   15:30	100		SAT		
Type of Absence	Documentation (For official are and)	)	Revised	Schedule	for (Date)	Approved in Advance		. is.	SUN		<u> </u>
Annual	For FMLA Leave (Certification For COP Leave (CAI on file)	reviewed)	) <u> </u>			☐ Y≃ ☐ No	1.75		MOM		
Carrier 701 Rule  LWOP (See reverse)	For Advanced Sick Leave (122 For Military Leave (Orders res	1 on file)	Begin V	V ork				7 (1) 5 T (1)	TUE .		·
Sick (See reverse)	For Court Leave (Summons ren	riewed)	Lunch-	Onit				rif.	WED		
COP	For Higher Level (1723 on file Scheme Training Testing, Qua	) lifying <i>(Memo on f</i> i	Lunch-	In					THU		
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NOT IOD; FMLA LEAVE W	at	•	Total H			<del></del>	-	r, X-L	SAT	LA	8
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·	al leave authorized in excess of amoun				of Supervisor and				MON		
Employee's Signifure and O	nte 13/64 Signature of Person Reco	rumg Aosence and	Date		of Supervisor and	124 (E)	7		TUE		
Official Action on Applica	tion (Return copy of signed request to e	mployee)						<u> </u>	WED	<u>L</u> _	
Approved, not FMLA	Approved FMLA	Approved FMLA, nemation Noted or	Pending Reverse.		en Supervior	開始計画を			THU		
Disapproved (Give Res	/		- 3	m	Buce	544	<u></u>	<u>'</u>	FRI	<u> </u>	<u> </u>
Incligible for FMLA (6	istimate eligibility date):		·		Continued on	Reverse					
PS Form 3971. April 2001		W	erning: Th	e furnisi an \$10,0	ing of false information	mation on this form may res nt of not more than 5 years,	uit in a f or both,	ne of : (18 U.	not more S.C. 1001)		
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During This Absence, I Was Incopagitated for Duty by:	Leave Types (Information	(Only)			F	PP.		Year
Sickness : Undergoing Medical, Dental, or Optical Examination or Treatment	Leave Type	Time Card Code	PSDS Code	Scheduled	Un- Scheduled			
Off- the-lob injury (100 femilies) Pregnancy and Confinement Undergoing Medical, Dental, or	AL-FMLA	55/01	32	10	, w	Day	Init.	Hours
Optical Examination or Treatment	SL-FMILA	56/02	33	1.		SAT		
(Not job related)	LWOP - FMLA - Part Day	59/05	36	<del> </del>			<b>├</b> ──┤	
During This Absence, I Was Unavailable for Duty Because	LWOP - FMLA - Full Day	60/06	37.	ł	,	SUN	1 1	
Sick Leave for Dependent Care Placement of a Child with Employee	LWOP - Lieu of Sick Leave	59/60	20 🚕	<del> </del>	12	MON	1	
Birth of Child - Bonding for Adoption or Foster Care	LWOP - Proffered	59/60	21			113011	11	
Additional Information Regarding Denial of Leave Protection Under FML	LWOP - Personal Reasons	59/60	22	F	1.5	TUE		
	LWOP - Part Day	59	23	1	٠٠٠.	<u> </u>	<u> </u>	
Employee Not Eligible - Less than 1250 Hours Worked	LWOP - Full Day	60	23	<u> </u>	1	WED	1 1	
Employee Not Eligible - Not Employed with USPS 1 Year.	LWOP - AWOL	59/60	24	ļ			<del> </del>	
Employee Has Exhausted FMLA Entitlement in Current Leave Year.  Absence Not for a Covered Condition.	LWOP - IOD (Not FMLA) -OWCP	49	25	Ĺ	ŀ	THU	i i	
Absence Not for a Covered Condition.  Absence Not for a Covered Family Member.	LWOP - Maternity	59/60	26	-	<del>                                     </del>	FRI	1	
Requested Documentation Not Provided.	LWOP - Suspension	59/60	27	L	1	ı ıd	<u> </u>	
C Documentation Provided. Does Not Meet Criteria for FMLA Protection	LWOP - Union Official	84	28		1	SAT	1	
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Additional Documentation Required		59/60	29	1	)	SUN	il	
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	Court Duty	6) .	04		İ	IDE	1 1	
	Military Leave	67	05		i	WED	1	
	Postmaster's Organization	89	80	Li.	<u> </u>		<u> </u>	
	Blood Donor Leave	69	09		1	THU	1	
Privacy Act: The collection of this information is authorized by 39 USC 401,1031	Other Paid Leave	86	10	<u> </u>	<u>                                      </u>	<u></u>	1	
1003, 1005; 5 USC 8339; and Public Law 103-3. This information will be used to	Convention Leave	66	12	ŀ	ľ	FRI	! !	
grant or deny your request for official leave from Postal Service duty. It may be disclosed under the routine uses given in Privacy Act system notices USPS	Acts of God	78	13		<u> </u>		<b>└</b>	
050.020 and USPS 120.070 (see appendix of Administrative Support Manual or, if	Veteran's Funeral	86	10.	1				
you wish to obtain a copy of these notices contact your personnel office).	"Relocation	80	15	1				
Completion of this form is voluntary. If this information is not provided, official	Civil Defense	77	16	1				
leave may not be granted.	Civil Disorder	81	17	1				
	Voting Leave	85 .	18	ļ				

PS Form 3971, April 2001 (Reverse)

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Characteristic   Continue medical information   Continue med	=	1		Lunch	-In					Ţ	T		T	
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Chirosi Action on Asplication (Return copy of signed faques to simploysis)   Signature of Supervisor and Date   Signature of Supervisor on Reverse   Signature of Supervisor on Reverse   Signature of Supervisor Confirmation of Signature of Supervisor of Signature of Supervisor on Reparting Date   Signature of Supervisor On Signature of Supervisor On Signature of Supervisor On Signature of Supervisor Signature of Signature of Supervisor On Signature of Signature of Supervisor On Signature of Signature		12/14/6 Signature of Pe	erson Recording Abse	nce and Date	Signatur	re of Supervi	sof and Date	Notific	$\Box /$	L	L	10	<u>:r</u>	<u> </u>
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Approved (New Passon):   Signature of Supervisor and Date   Signature of Supervisor	Official Action on App	lication (Return copy	of signed requ	est to er				•			檬		<del>/</del>	<del> </del>
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Inteligible for FMLA (Estimate eligibility date):	Disapproved (Give reason):		M3 15-1	410	L					1-	╁		+	-
PS Form 3971, April 2001 (Page 1 of 2)  Warning: The furnishing of false information on this form may result in a fine of not trans \$10,000 or imprisonment of not more than 5 years, or both. (18 U.S. During This Absence, I Was Incapacitated for Duty by:    Sickness						<b>—</b>				- 1			j	
buring This Absence, I Was Incapacitated for Duty by:    Sickness		e eligibility date):				L_1 Continu	ied on Reve	ze '		<u></u>		1		<u> </u>
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U.S. Postal Service EEO Investigative Affi	davit (Witness	;)	Page No.	No. Pages 4	Case No. 1C-081-0019-04
1. Affant's Name (First, Middle, Last) Carla M. Vanistendal		, ,	2. Employing Postal Facility Delaware P & DC		
Position Title     Manager, Distribution     Operations	4. Grade Level EAS-19	PO Box 100	5. Postal Address and ZIP + 4 PO Box 10000 Wilmington DE 19850-9997		6. Unit Assigned Tour 2

### **Privacy Act Notice**

Privacy Act Notice. The collection of this information is authorized by The Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e-16; The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a; The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794a; and Executive Order 11478, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the USPS to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief tegislation; to an independent certified public accountant during an official audit of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the National Labor Relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for Postal Service employees and other witnesses.

### **USPS** Standards of Conduct

Postal Service regulations require all postal employees to cooperate in any postal investigation. Failure to supply the requested information could result in disciplinary action. (ELM 666)

Mv name is Carla M. Van Istendal. I am a female. I work at the Delaware P & DC. I am a Manager, Distribution Operations and my telephone number is 302-323-3780. Some time prior to the December 24, 2003 incident I had a conversation with Ms. Wilson about her work status. I asked her about her restrictions and when she would be able to return to full duty. Ms. Wilson informed me that she was never going to return to full duty. Upon learning this, I spoke with Ms. Wilson's supervisor, Linda Drummer, and asked her to look into the situation and her current status with Shared Services. In either late November or the beginning of December, Linda Drummer came to me and said she had been shopping for the holidays at Boscov's Department store and saw Ms. Wilson working there. This was of great concern because it appeared that the work Ms. Wilson was doing directly violated the medical documentation and restrictions she had provided to the US Postal Service. Linda and I discussed the situation and came to the decision that action needed to be taken, since this involved fraud in our opinion. At that point ! contacted Labor Relations Specialist Isacce Morris to find out the proper procedures to handle this type of situation. We gave Ms. Wilson a letter asking her to update her medical restrictions. She provided the updated medical and it was dated December 12, 2003. The documentation stated that she was not able to stand for any portion of her work day and needed to stay in a modified case using a chair with armrests. After receiving this documentation, I consulted with Labor Relations and the Inspection Service. I went to interview the Human Resources Manager at Boscov's on Route 273 in Delaware. I had with me a list of questions provided by the US Postal Service's Law Department that I received from Mr. Morris. During this interview I determined that Ms. Wilson was in fact working at Boscov's and violating the medical restrictions she had provided the USPS. I brought that information to Labor Relations Specialist Morris and informed him that we wanted to take action based on that information. We had also received definitive information from Shared Services letting us know that all of Ms. Wilson's claims were either closed or denied. This meant that we were accommodating her in a light duty status. On December 24, 2003 I consulted with Labor Relations Specialist Morris again. I brought Ms. Wilson into the MDO's office and called Shop Steward Leon Tucker to the office to represent Ms. Wilson, I informed Ms. Wilson that I had some questions and concerns about her most recent documentation. I also told her that we had been in contact with Shared Services with in the past twenty-four (24) hours and that they had informed us that all her claims were either denied or closed. I asked Ms. Wilson if she was working outside of the Postal Service. She wanted to know why I was asking her the

I declare under penalty of perjury that the	ne foregoing is true and correct.
Affiant's Signature	Date Signed 4/27/04
PS Form 2568-B, March 2001	

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question and would not answer. I told her that I had proof that she wa	s working	outside of t	he Postal Service and
that the work she was doing directly contradicted what her documenta	ation stated	she could	do. I asked her once
again if she was working outside of the USPS and she refused to ans	wer. She	did state tha	at her medical docu-
mentation was only for the Post Office and that it didn't count for anyth	ning she di	d outside of	f the USPS. I informed
Ms. Wilson that since her documentation was in question we were not	able to ac	commodate	e her light duty. I told
her that she needed to provide updated medical documentation and the	nat once w	e had recei	ved and reviewed it,
we would contact her as to her status. Labor Relations Specialist Isac		<u>-</u>	
Ms. Wilson. I have no knowledge of a consensual relationship between	en Mr. Mor	ris and Ms.	Wilson. Ms. Wilson
never informed of any advances from Mr. Morris. I do not know if Ms.	Wilson co	mplained to	other members of
management about Mr. Morris. I was interviewed by fact-finders regar			
December 24, 2003 incident. I do not have a copy of any internal hara	ssment in	vestigation	findings nor have I ever
seen them. I am not aware of any contact by telephone or otherwise a		_	•
advances were no longer welcome. I do not think Mr. Morris recomme	ended she	be taken of	f the clock because she
told him his advances were no longer welcome. Ms. Wilson was taker	off the clo	ock because	e her medical docu-
mentation regarding her restrictions was in question. Ms. Wilson was	•	`	•
Claims at Shared Services were either closed or denied. Ms. Wilson w	vas workin	g outside of	fthe Postal Service and
performing duties there which were in direct conflict with the restriction	s she prov	ided the Po	stal Service.
Ms. Wilson was informed of all these issues on December 24, 2003 an	d told that	she was be	eing taken off the clock.
Ms. Wilson was also informed that she needed to provide updated med	dical docur	nentation a	nd that we would
contact her as to her status once we had received and reviewed her up	dated doc	umentation	. I relied on Article 13
(APWU), ELM 661.42 and the Light Duty Policy to take Ms. Wilson off t	he clock.	The RMOs	who participated in the
decision to take Ms. Wilson off the clock were: Linda Drummer, Isacce	Morris, an	d myself. N	Ar. Morris' role was
providing technical assistance and expertise to Ms. Drummer and myse	elf regardin	g contractu	ial issues so that she
and I had the information we needed to reach our decision. Linda Drun	nmer (Ms.	Wilson's di	rect supervisor) and I
(Ms. Wilson's MDO) discussed all the information and decided that bas	ed on the	medical res	trictions provided,
the conditions of her outside employment, Article 13, and the Light Duty	Policy tha	t Ms. Wilso	n should be taken off
the clock on December 24, 2003. A copy of Ms. Wilson's medical restriction	ictions, dat	ed Decemb	per 12, 2003 is
I declare under penalty of perjury that the forego	oing is tru	e and corre	ect.
Affiant's Signature	Date Signe	d,	<del> </del>

PS Form 2569, March 2001

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attached. Ms. Wilson was accommodated in a modified letter case.	Ms. Wilson	n gave us m	edical documentation
dated December 12, 2003 which was identical to her previous documents	entation.	Article 13, E	LM 661.42 and the Light
Duty Policy helped guide me when I discovered that Ms. Wilson was v	vorking ou	tside of her	restrictions at another
job outside of her employment with the USPS. I found out that Ms. W	ilson was	working at E	Boscov's when in either
late November or early December Linda Drummer informed me she h	ad seen N	ls. Wilson v	vorking there while she
was out shopping for the holidays. Ms. Drummer told me that Ms. Wil	son was w	vorking as a	sales clerk in the
Women's Department, standing on the floor and helping customers. S	Since the o	locumentati	on Ms. Wilson had
provided the Agency stated she was not permitted to stand at all, we keep	new she v	vas working	outside of her restrict-
tions at another job. I interviewed Mr. Dan Carty, HR Manager at Boso	cov's Depa	artment Sto	re, Newark, DE, at
12:30 p.m. on December 22, 2003. Mr. Carty told me there were no s	it down job	s available	and that Ms. Wilson
had to stand while performing her duties. Mr. Carty told me that Ms. V	Vilson wor	ked five (5)	days per week and
approximately twenty-five (25) hours each week. I have attached a co	py of my h	and-written	notes from that inter-
view. I have never had any reason to take any other employee off the	clock for y	vorking outs	side of their restrictions
at an outside job. I do not have access to USPS cellular phone record	s for Mr. N	Norris. The	y should be available
through the South Jersey District office if Mr. Morris has been issued a	USPS ce	llular phone	. I have the following
phone numbers on record for Ms. Wilson: Home 302-395-4854 and Er	nergency	302-395-48	54. As stated earlier,
Linda Drummer and I discussed all the information available to us rega	ording takir	ng Ms. Wils	on off the clock for
working outside the Agency and violating her medical restrictions. I rel	ied on Arti	cle 13 of the	e APWU contract,
The Light Duty Policy, and ELM 661.42 when deciding that Ms. Wilson	should be	taken off th	ne clock. The policies
are uniformly applied; however, I have no examples since I have never	dealt with	another of	my employees working
outside of the Agency and violating their medical restrictions. I did not	know of a	ny similar er	nployees to Ms. Wilson
(same tour, shift, work location, job duties, supervisor, chain of comma	nd, etc.).	i had no kn	owledge of discipline
either. I was not aware of Ms. Wilson's prior EEO activity. Ms. Wilson	did file a g	rievance in	this matter. I have
attached a copy of the Step 2 decision. The main factor in deciding to	take Ms. V	Vilson off th	e clock on December
24, 2003 was that she was working outside of the Postal Service and p	erforming	job duties t	nere which she said
she was incapable of performing here. Ms. Wilson has an obligation to	the Posta	Il Service as	s her primary source
of employment to perform to the best of her ability. Since she was able	e to perfor	m outside o	f her restrictions at her
I declare under penalty of perjury that the foreg	oing is tru	e and corr	ect.
Affinally Circulum / III -	T Data Sign		

PS Form 2569, March 2001

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other employment, I decided the right course of action, based on the	Agency's n	ules and re	gulations, was to take	
Ms. Wilson off the clock on December 24, 2003. On that day when I to	orought Ms	s. Wilson in	to the office in order to	
gather more information, she chose to be uncooperative and not answ			·	
Ms. Wilson also stated that her restrictions did not count for anything of				
that is not in concert with ELM 661.42. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	XXXXXX	XXXXXXX	XXXXXXXXXXXX	
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I declare under penalty of perjury that the forego	oing is tru	e and corre	ect.	
Affiant's Signature	Date Signe	4/27	404	

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## **DRUMMER DEPOSITION**

- Q. She told you, "Hey, I got a job at Boscov's"?
- 2 A. Mm-hmm.

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- Q. Did she seem pleased with the job?
- A. She seemed happy about it.
- Q. What kind of job? What did she tell you about the job?
- A. I believe she told me she was working as a sales clerk.
  - Q. I know Boscov's has a couple locations in New Castle County. Did she tell you where she was working?
  - A. I don't recall she told me where.
  - Q. Did that employment with Boscov's raise any red flags in your mind as a supervisor, or was it just something you just kind of mentally filed away?
  - A. Basically I mentally filed it away, yeah.
- Q. Did there come a time when you were shopping at Boscov's and saw Ms. Wilson?
- 19 A. Yes.
  - Q. Can you tell me when that was?
- A. Probably November, December, sometime around there.
  - Q. Which Boscov's store was that?
  - A. The store on 273.



- 1 Q. Did you have any conversations with her then?
- 2 A. I stopped and spoke with her, yes.
  - Q. Buy anything from her?
  - A. No.

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- Q. Did there come a time when Ms. Wilson's employment at Boscov's became a concern of yours in your capacity as her supervisor?
- A. It became a concern when I had -- I mentioned
  it to my boss that, hey, I saw Melinda Wilson working
  at Boscov's.
  - Q. Who's your boss?
  - A. Carla Van Istendal.
- Q. When was the occasion? Was there something that prompted you to mention this?
- 15 A. No. We were --
- 16 Q. Do you remember how it came up?
- A. We were either getting ready to have our plan 5
  meeting, which is our morning -- we have a morning
  meeting and I just said, "Oh, by the way I saw Melinda
  working at Boscov's."
  - Q. What was Ms. Van Istendal's reaction to that?
  - A. She said, was she working outside of her restrictions? She just asked me.
    - Q. When you say working outside of restrictions --



10/5/04 Supervisor's Statement

"Just cause" is the issuance of discipline based on certain criteria. Is there a reasonable rule; has a through investigation been conducted; is the discipline issued consistently and equitably; is it reasonable in relation to the infraction.

The removal issued to Melinda Wilson was based on 1- there is a reasonable rule stating that a postal employee cannot be gainfully employed while in sick leave status and also a rule that states that outside employment can not impair mental or physical ability to perform postal service duties. 2- In my attempt to do a through investigation by means of a pre-disciplinary interview, the employee gave absolutely no reason for her actions so I had the base my decision on the information gather in the IM. 3- We are dealing with an employee with almost 20 years of postal experience, who has been a 204-B and has served as a shop steward. It is not reasonable to believe that such an employee would lack knowledge of basic standards of conduct that are expected of all employees in an industrial environment.

Why didn't I choose to use corrective action instead of removal?

I felt that progressive discipline was not appropriate because this is one of broken trust that it essential in an employer/employee relationship. This violation falls into the same category as stealing from the post office or its customers. Mis-use or abuse of sick leave costs the P.O. large amounts of money in overtime. Sick leave is a benefit provided to employees to cover them when they are totally incapacitated. It is not provided so that the employee can save their energies for another job and still get paid from the post office. This practice is dishonest and deems the abuser as an untrustworthy employee. Allowing a dishonest employee to continue working in the PO is not a correctable



Wilson, Melinda 221-52-2808 Addendum to supervisor statement provided on 1/13/04 and on 5/4/04

Document 36-3

Melinda Wilson worked the flat sorter from approximately June 6, 2002 to October 13, 2002. During this period of time she spent as much time off of the machine as she possibly could. This means that when we had an excess of employees she would volunteer to go to a letter casing job. There doesn't appear to be a full week during this time period in which she worked her job for 40 hours. She often used leave time to go home early at least 2 days per week. While on the flat sorter she was required to move mail to the machine for processing. She did this as little as possible. Wilson would have her fellow male co-workers to move the mail for her as often as she could. When this was not possible she would be absent from the area when it was her turn to move mail. She attempted to rally the other employees into refusing to bring mail to the machine. This was not successful because the other clerks knew that once the mail for the machine is placed in the staging area then it was their responsibility to move it to the machine. The crew consists of males and females. The other females, both small and larger sized, were very capable of moving the ergo carts loaded with magazines without assistance. When assistance was needed they are instructed to ask another employee to help move the equipment. Wilson claimed that she was too small to move the move the equipment. She was not the only small female working in the area. Her contention was that the mail handlers should bring all mails to and take it away from the machine after processing.

The ergo carts used to transport flat (magazines and catalogues) were carefully designed to accommodate any size person who might be required to handle the equipment. These carts are designed to protect the users back by automatically adjusting in height. They are on wheels and are very easy to maneuver. All employees were trained on the safe use of the carts before they were put into service. These carts weigh about 410 lbs. empty. They weigh a maximum of 1500 lbs. loaded with mail. Again they were designed to be ergonomically safe for all sizes of employees to use.

Wilson stated in the Ca form that she filed that she had been moving 1-1/2 tons of mail around since she began the job in June 15, 2002 until the time she filed the claim. She stopped working any job that required her to lift

Page 2 Wilson, Melinda 221-52-2808 Addendum to supervisor statement

more than 10 pounds in October 2002. The postal service does not have any equipment weigh 3000 pounds that would have to be manually moved. Wilson has not moved anything weighing more than 5-10 pounds since October 2002. She was accommodated with a chair with arms for many years prior to her position on the flat sorter. Wilson provided medical documentation stating that she could do the duties of the flat sorter so that she could bid on a day job with Sunday/ Monday off. She began the job June 2002, may never have worked a full 40 hour week in the job, and went back to restricted duty job sitting in an armed chair in October 2002. This is where she remained until she was removed from the postal service pending termination in March 2004.

Linda Drummer Supervisor Distribution Operations

Page 39 01 77
Partial
Simperurion 5
File

Several Months Ago Melinda Welson was in my office representing another employee for something burelates of this grievance. At the land of that seasion, I asked there when she felt she would be situation. I asked her when she felt she would be able to return to full duty and her bid for on the flat sorter. She told me that she was pever going to peturn to her for because she heeled surgery and she was not going to have it, Upon Marning this I spoke with the Wilson's supervisor, I said drummer, and daked her to look with this trummer, and daked her to look with this juices.

Sometime in the beginning of illsember Senda Drumme Came to the and said she had been phopping for the habitage at foscor is and sur the wider working there. This was of Great Concern because it appealed that the work the bulson was performing directly prolated the medical documentation and restrictions she had provided to the US footal dervice. Sinds and I discussed the situation and came to decision that action puched to be taken since this involved freyed in our opinion. At that point of Contacted Solve Relations specialist Isacce. Thorris to find out the proper procedures to handle this ifpe of petuation. We gave the Welson a letter Nauestan updated medical. She provided the Other neutrinous and it was dated bleember 12, 2003. The documentation and it was dated bleember 12, 2003.

to stand for any portion of her work day or Thicked to stay end a modified case casing a chair with aimrests after receiving this documentation of consulted with Labor Relations and the Anspection Generice. I went if Unterview the Suman Resources Manager at Boser's Department Store on Route 273 in Newarle, Delaware, I had with me a list of questions provided by the US Postal Service's Land Department that & received from Mr Morris. They were as follows: Now youly had my Wilson been employed It poscor of Dow many hours per day did she work! What he her file duties? Can we have a copy of her fit description and duties! Can we have a Copy of her payroll records? I met with The dan Carty, HA Marager, on December 22, 20, 3 at 12:30 pm for approximately 15 to 20 minutes. He Hold me that Mrs Wilson had been employed ht procor's since October 20, 2403 as a soler flreon in the Women's Department, McCarty said his Wilson Worked approx smately 25 hours perweek in a 5 day work week, He said that her for required her to stand the Centeri terne she was performing her duties, se was not able to give me a Copy of her job description or payabl records. Mu Carty stated we would have to send a request to their legal department to acquire that information. I Grought that information to Labor Relation's Speciales

Morris and Unformed hem that we wanted to take action based on that Unformation. We had also received definitive vinformation from Thosed Services lettling us know that all If Ms Wilson's Claims were wither Closed or denied, This meant that we were accomplating no Wilson in a light duty status. As all 14 these things were occurring, his Wilson asked if she Could participate Un an EEO hearing in December 23, 2003 for Graining purposes, Der supervisor Grantled her leave St she Could attend. I wan Also involved un this EED hearing.

On December 24, 2003 & consulted with Sabor again. I brought his Wilson its the moo's office Und Called Shop Steward Ston Tucker to the office to participate, this was approximately 9.30 Am. I Unformed his Wilson that I had some questions and concurs about her most recent dreumentation. I also told her, that we had been in Contact with Thered Services withen. The past 24 hours and that they had informed us that all her claims were either denich or Utsek. I asked The Wilson if she was working interde of the Partal Service. She wouldn't Unswer the and Wanted to know why I was asking her the question. I told her that & had groof that the was worken outside of the

directly contradicted what her documentation stated The could do. I asked her again if she was not working outside of the Postal Service and she was refused to answel once again, of unformed he Wilson that we would me clonger be able to accommodate her win or light duty and that she would have to give mi a slip for annual leave or leave without pay to come her until she provided updated medical documentation for our review. During these exchange Mail Standler AVA John Brown had centered the room for a moment and Mo Wilson told him that be who being paid back for farticipating in the Eto hearing of tried to explain to the Wilson that all of this had becurred before & were knew she was gling to be present at the hearing, but My Wilson did not acknowledge that.

During our discussion his Wilson told me she had paperwork proving that she had a valid limited Claim and asked if the Could go to her locker to get it. When she returned she had a copy of an intituel offer from her supervisor Link Drummer & Hold her that the document she was showing me only strengthened my argument that something was awily with hel documentation, since the Ffer, tated that the only work she was capable of Was porting mail in a Mashified Case while seated in a Chair with armrests, I also recterated that all he Mains it Should Service were.

Cether Closed or denich. I told her again that We were that ging to accompate her with her Current documentation and that she would need do clock but. Dupplement is her that she would need to provide applated medical document her as to her status. I remended her that I Would need a slip for either annual cleave or leave without pay, Ms Wilson said she was going to request administrative cleave. I kill therly shelled, it would be denied and she would be absent without live.

Ms Wilson requested time on the clock to Contact Owco Lik Shared Services about the status of her Claims. I denick that request because It was inappropriate. The Wilson then Hold me that she wanted to file in EED Complaint and that she wanted to do that of the clock. I allowed her to call the douth Jerry EED office from the MODD office and She requested the paperwork. Once that was done, I asked her for her cleane slip and told her she was to cleave the premiser. This Wilson gave me a plup for FMLA Sich leave. I sold he told me she was using fines because I make her sich. I told her that documentation Intan reasonad. And Durate that on the 3971.

She did not acknowledge that and would not speak to me at that point. at no time did dery no Wilson the apportunity to take a set of light duty request forms. The never requestes Dry forms and continued to insict that take was not a light duty case and that she was to be accomplated in a limited duty status. X told her repeatedly that I was requiring updated documentation for my review.

The Wilson did not request lither annual leave or leave without pay to come her until she provided new downentation. The only Kurned in a slip for Forth sich clear to cover her on December 24, 2003 from her end four of 1025 to her somal and down of 1550, at present The Wilson is being carried un an absent without cleave (Adoc) status.

## **KEEN DEPOSITION**

- Q. In what way? I mean, Boscov's doesn't compete with the Postal Service, do they?
  - A. Not to my knowledge.
  - Q. How was it incompatible?
- A. In Ms. Wilson's case, there were a number of occasions where she had reported out sick for the Postal Service and subsequently reported for duty at Boscov's. I believe on one occasion she had reported out sick for the post office and then went immediately over to Boscov's and began working.
- Q. So is there anything else you want to add to support that particular violation?
  - A. I do not.

Q. The next section you cited as a grounds for removal is section 666.2, and that reads, "Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service." And then it says, "Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require postal personnel be honest, reliable, trustworthy, courteous, and of good character and reputation, and employees are expected to maintain satisfactory personal habits as not to be obnoxious or



offensive to other persons or create unpleasant working conditions."

And my question with respect to section 666.2 is, can you tell me in your mind what conduct or misconduct by Ms. Wilson violated section 666.2?

- A. I believed her behavior to be improper, her conduct to be improper under these for the reasons I've already said: for reporting out sick for the Postal Service and on the same days reporting to work at Boscov's, and on at least one occasion for leaving the Postal Service and reporting to Boscov's -- on sick leave and then reporting directly to Boscov's.
- Q. Now, in recommending that Ms. Wilson be removed from the Postal Service, was there anything else that you would have used or did use to justify her removal?
- A. I don't believe I said that I recommended she be removed from the postal service.
  - Q. Well, you drafted this letter?
- A. I did.

- Q. Right. And what's it say?
- 21 A. It says what it says.
  - Q. Did you recommend she be removed?
- A. It's not myself decision to make. It's not my recommendation.



Α.

Q. Great. Just to bring us back up, am I correct
that your testimony was that your understanding of
this grievance was it was a Union challenge to the
Postal Service decision to not allow Ms. Wilson to
work until she provided updated medical documentation?
A. Correct. That they would no longer honor her
medical restrictions and her current limited duty job
offer.
Q. Based on your experience as a labor
representative, in your opinion, was the Union using
its best efforts? In your dealing with the Union, was
the Union using its best efforts to try to prevail on
the grievance?
MS. HANNIGAN: Objection to the form of
the question. You're asking his opinion?
MR. LEFF: In his dealings with the Union
on this grievance, based on his experience, did he
have any sense that was it his sense in dealing
with unions that the Union was using its best efforts
to prevail on this grievance.
MS. HANNIGAN: So it's his opinion?
MR. LEFF: Yes, his opinion.
MS. HANNIGAN: He can answer it.



In my opinion they put a vigorous -- vigorous

efforts into the grievance.

Q. Thank you, sir.

Turning to your exhibit number 3, you testified that this was a grievance over a representation issue, is that correct?

A. Yes.

- Q. Again, let me ask a preliminary question.

  Melinda Wilson's name is listed in this step 2 letter.

  Do you know, was the basis of the Union's grievance something that happened to Ms. Wilson with respect to representation that the Union believed violated the contract, was that your understanding?
  - A. Ask me that again, please.
- Q. I guess I just want to clarify, was it your understanding that the Union filed a grievance on the basis of a representation issue involving Melinda Wilson, at least in part?
- A. The Union filed a class action grievance and cited the occurrence involving Ms. Wilson as part of their class action grievance.
  - Q. Okay. Thank you for clarifying that.

Again, based on your experience and your dealing with the Union on this grievance, did you get any sense or, in your opinion, was the Union not using



accomplished at 1:21 p.m. on March 30th of '04, and that the notice for certified letter was left at that same time and date and -- I'm sorry. Go ahead.

- Q. Turning back to the arguments that the Union made in this grievance, do you recall that the Union made both a number of procedural and substantive arguments, do you recollect that?
- A. Ask that in another way, please. I don't understand.
- Q. Fair enough. Procedural meaning processes that need to be filed with respect to the timing of when the discipline comes, the day in court, things of that nature, and procedural meaning whether there was just cause, whether there was progressive discipline, whether ELM procedures were followed, things of that nature. Did that clear it up?
- A. Yes. The Union made various arguments, both procedural and substantive, as you defined it.
- Q. Am I correct that you were the arbitration advocate for the Postal Service for the notice of removal grievance?
  - A. That's correct.

Q. And Steve Collins, the president of the local union was the arbitration advocate for the Union, is



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       that correct?
 2
         Α.
              Yes, sir.
              Turning your attention to the arbitration
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         0.
      hearing, do you recall -- let me ask this. Did you
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 5
       call witnesses on the Postal Service's behalf?
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         Α.
              I did.
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              Do you recall that Steve Collins cross-examined
         0.
 8
      those witnesses?
 9
              I do.
        Α.
10
              And did he cross-examine those witnesses?
        0.
11
        Α.
              Yes, he did.
12
        Q.
              Do you recall whether Mr. Collins called
13
      witnesses for the Union's behalf and asked that
14
      witness or those witnesses questions?
15
        Α.
             Yes.
16
        Q.
             And did he do that?
17
        A.
             Yes.
18
        0.
             Do you recall whether Mr. Collins entered any
19
      exhibits?
20
        Α.
             Yes.
21
        Q.
             And did he enter any exhibits?
22
        Α.
             Yes.
23
        Q.
             Do you recall whether Mr. Collins made
24
      objections to exhibits that you wanted to introduce?
```



	1	•	
1	А. У	es.	
2 -	Q. P	and did he make such objections?	
3	А. У	es.	
4	Q. I	oo you recall that Mr. Collins submitted	
5	arbitration awards to the arbitrator after the		
6	hearing?		
7	A. Y	es.	
8	Q. A	nd did he submit such arbitration award?	
9	A. Y	es.	
10	Q. A	gain, based on your experience as a labor	
11	representative for the Postal Service, did anything		
12	happen d	uring that hearing where you would form an	
13	opinion	that the Union did not try to use its best	
14	efforts	to prevail on both the timeliness of the	
15	grievance argument and the merits of the removal case?		
16	A. I	thought the Union put a vigorous advocacy	
17	effort f	orward.	
18		MR. LEFF: Thank you. I have no further	
19	question	s.	
20		MS. HANNIGAN: Nothing.	
21		MR. BERNSTEIN: Couple of follow-up	
22	question	S.	
23			
24			





Date:

March 23, 2004

Subject:

C00C1CD04084651

CL230204 WILSON

WILMINGTON DE P&DC

To:

Courtland Stinson

APWU, Malcolm Smith Local

DE P&DC

On 3/18/04 we met to discuss the above captioned grievance at Step 2. The 7 day period to schedule a step 2 meeting was extended by mutual consent. The issue in this grievance is whether management violated Article 10 and Article 19 of the CBA when Melinda Wilson was placed on

The union contends that management violated the cited Articles 10 and 19 of the CBA when they placed Ms. Wilson on unpaid leave, specifically on AWOL from 12/27 to 2/2/04. The union contends that management improperly instructed Ms. Wilson not to report for duty, and that therefore Ms. Wilson is entitled to be compensated. The union requests that Ms. Wilson be paid for all time lost from 12/27 to 2/2/04.

Management contends that this grievance is filed in bad faith, as this grievance is repetitive. The union has already filed two grievances on this issue (see 04053770 and 04070115) with the same requested remedy. Management further contends that this grievance is untimely. The incident in question had its inception on 12/24/03 and the first day of AWOL was 12/30/03. The union contends in their Step 2 appeal that "the union became aware on 2/21/04". I also note that no Step 1 was filed until 2/27. The union contends that Ms. Wilson did not know she was in a nonpay status until she returned to work and was given 3971s to sign on 2/13, therefore the Step 1 filed on 2/27 is timely. Management contends that Ms. Wilson knew she would be AWOL when on 12/24 she was told to make a leave choice for her absence and declined to select leave beyond 12/24. Analysis of TACS reports shows that Ms. Wilson was charged Annual Leave on 12/27 and only began to be charged AWOL on 12/30. This non-paid AWOL time would have been on Ms. Wilson's paystub on 1/15 at the latest. Certainly Ms. Wilson knew at that time that she was not in a pay status. Ms. Wilson also got pay stubs on or before 1/29 and 2/12 which all would have shown non-pay status. The 14 day period to file a grievance at Step 1 begins when the employee or the union knew or reasonably should have known about the alleged violation. It is obvious that Ms. Wilson knew well before 2/13 that she was in a non-pay status from 12/30 to 2/2. Further, management contends that the Step 2 appeal is procedurally defective in that it is dated 2/21/04 and was obviously completed on that date. The Step 1 hearing was 2/27/04. The Step 2 appeal contains no information whatsoever about a Step 1 hearing. The only types of grievances that may be directly appealed to Step 2 are under Articles 2 or 14, neither of which apply in this case. The union's failure to hold a Step 1 hearing prior to filing a Step 2 appeal renders this grievance defective and waived.

MW/0933

FAX



Management contends there is no contractual violation as described by the union. Ms. Wilson was absent without pre-approved leave for the reasons covered in the previous two Step 2 responses. There is no need to repetitively address the union's contentions. The responses in the previous two grievances adequately addressed the circumstances surrounding Ms. Wilson's absence from 12/27 to 2/2.

The union contended a violation of Article 10 in that Ms. Wilson was charged AWOL from 12/27 to 2/2/04. For the reasons explained in the two prior grievances (see 04053770 and 04070115), this was the proper leave code. The ELM Section 513.64 covers AWOL. Ms. Wilson was advised on 12/24 to select a leave type for the term of her absence, but did not select a leave type or complete a leave slip beyond 12/24. Therefore, the designation of AWOL is appropriate and this portion of the grievance is denied.

The union contends a violation of Article 19 and the LMOU. When questioned, the union was unable to identify a specific handbook or manual or a specific provision of any handbook or manual or the LMOU. The CBA requires that the union will at Step 2 make a full and detailed statement of facts and the contractual provisions relied on. The union's failure to identify any specific provision of any handbook or manual renders management unable to investigate or address this allegation. Therefore, this portion of the grievance must be waived.

I also note that Ms. Wilson had medical documentation dated 1/8 and 1/20 but did not provide this to anyone until 1/22 and then only to her union steward. This information was received by Ms. Wilson's manager on 1/25 and on 1/26 Ms. Wilson was sent a notice to return to duty via express mail. Notice of this mail piece was delivered to her address of record on 1/27. Ms. Wilson however, did not pick up and sign for this mail piece until 2/4. On 1/30 two express mail pieces were sent, one requiring signature, and one with signature waiver. The signature waiver piece was delivered on 1/31 as was the notice for the mail requiring signature. The mail requiring signature was picked up and signed for on 2/4. I also note that on 1/30 SDO Linda Drummer contacted Ms. Wilson by phone and instructed to her report to work, but Ms. Wilson claimed that she was sick and unable to report for duty.

The parties shared all relevant information at Step 2 and it was agreed that all information requested by the union was provided. In view of the foregoing I can find no contractual violation. This grievance is denied.

Andrew Keen

Labor Relations Specialist

Cc:

grievance file MDO Van Istendal SDO Drummer

MW/0934

## COLLINS DEPOSITION

13 And you heard Ms. Wilson testify about 1 0. 2 attempting to contact you by phone prior to meeting 3 with you on April 6. Do you recall that testimony? Α. Yes. 5 First, do you recall meeting with Ms. Wilson in 0. 6 person on April 6? 7 Α. Yes. 8 Q. Do you know how that meeting came about or how 9 it was arranged? 10 Myself -- she called me on my cell phone. 11 Ms. Wilson was out of work, placed on administrative 12 leave. And we met down our union office which is 13 separate from the building, around the corner from the 14 post office, because she wasn't allowed on postal 15 premises. 16 Now, did you know she was on administrative Q. 17 leave prior to April 6? 18 Α. Yes. 19 How did you know that? 0. 20 I don't recall. A. 21 Do you know why she was on administrative Q. 22 leave? 23 I knew there was many times she was on Α. 24 administrative leave, but they were -- my assumption



- 1 A. Yes.
- 2 Q. Now, at that meeting did she show you the
- 3 | notice of removal?
- 4 | A. Yes.
- 5 O. Or did she have it with her?
- 6 A. Yes.
- 7 Q. And do you recall looking at that?
- 8 A. Yes.
- 9 Q. Do you recall noticing the date of the notice
- 10 of removal letter?
- 11 A. The date as far as --
- 12 Q. What the date was on the letter.
- 13 A. On what -- there's a lot of dates on there.
- 14 Which date are you talking about?
- 15 Q. Let me get that.
- 16 A. There's one right there.
- 17 Q. All right. I'll show you this one. It's
- 18 | Deposition Exhibit Wilson Number 1. You want to look
- 19 | at that there's a date at the very top?
- 20 A. Mm-hmm.
- 21 0. March 24th?
- 22 A. Yes.
- 23 | Q. Do you recall noticing that on April 6?
- 24 A. Yes.



- 12 A. The contract lays out clearly.
- 13 0. Isn't there also language in the contract to 14 the effect of in so many words -- let me get it for 15 you so I don't misstate anything.

I'm going to show you Wilson 4 and page 90, subparagraph A at the bottom of 91.

- 18 Α. Are you talking C or D?
- 19 Q. Pardon me?

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- 20 Are you talking about C or D.
- 21 Q. I'm talking about A.
- 22 You said on the bottom. That's 91 -- 90-A. Α.
- 23 Q. Okay.
- 24 Α. Okay. It says, "Any employee who feels



1 aggrieved must discuss the grievance with the

- 2 employee's immediate supervisor within 14 days."
- Q. Does it say anything about when the 14-day period begins to run?
- 5 A. Of which the employee or the Union first
- 6 | learned or may reasonably have expected to have
- 7 | learned of its cause.
- 8 Q. And what is your understanding of that
- 9 provision?
- 10 A. That once an individual receives a notice of
- 11 | removal, on that date the time clock starts clocking.
- 12 | Q. Okay. When Ms. Wilson showed you the notice of
- 13 | removal -- that's Wilson Number 1 -- did you pay any
- 14 | particular attention to the fact that the letter
- 15 | states that it was sent by certified mail?
- 16 A. I knew it was sent certified mail.
- 17 Q. Is that the normal practice?
- 18 A. No.
- 19 Q. How did you --
- 20 A. Melinda told me she was out of work.
- 21 | Q. Did you ask her when she signed for the
- 22 | certified mail notice?
- 23 A. Yes.
- 24 Q. What did she tell you?



- 20
- 21
- 23 Do you recall that testimony? Q.
- 24 Α. I recall it.



- 1 Q. Do you agree or disagree with that testimony?
- 2 A. Disagree.
- 3 MR. LEFF: Object to the form of question.
- 4 | Q. What is the basis for your disagreement?
- 5 A. She told me that she got it on the 6th.
  - Q. Did you tell her to put that in the
- 7 | handwritten?

case.

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- A. Of course, you needed a whole scenario of when you get everything, what the whole scenario of the
- 11 Q. Were you concerned about getting the step 1
  12 grievance on the table?
- MR. LEFF: Object to the form of the question.
- 15 Q. That there was any urgency to do that after 16 April 6?
- 17 A. Urgency?
- 18 Q. Yeah.
- 19 A. Explain yourself.
- 20 Q. Looking at this letter, you see it's dated
- 21 | March 24?
- 22 A. That's the date that management prepared that
- 23 letter. I've done hundreds of grievances through the
- 24 | years. That's the date that labor prepares it. It



- 1 A. No.
- 2 Q. Let me ask you this. Were you satisfied in
- 3 | your own mind that you had 14 days from April 6 to
- 4 | file the step 1?
- 5 A. Absolutely.
- 6 Q. Okay. No question?
- 7 A. Absolutely.
- 8 Q. No doubt?
- 9 A. Third time. Absolutely.
- 10 Q. Now, as I understand it, when this case went to
- 11 | arbitration, the arbitration hearing itself was
- 12 | divided in two, is that correct?
- 13 A. No.
- 14 | Q. That's not bifurcated?
- 15 | A. They have heard -- we heard -- it wasn't an
- 16 | actual bifurcation where we heard it just on the
- 17 | 14-day -- heard the 14-day argument first. Then we
- 18 | went on with the merits. And that was the ruling that
- 19 | the arbitrator ruled.
- 20 | O. So there was evidence taken on the timeliness
- 21 of the grievance issue, correct?
- 22 | A. Yes.
- 23 Q. And there was also evidence taken on the
- 24 merits?



Α. Yes.

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- 2 0. But the arbitrator decided, I'm going to rule 3 separately on these issues, is that correct, or was 4 that by agreement?
  - He came out and had a conference between Andy Α. Keen and myself. He mentioned that he did not want the labor rep's name brought in unless it had direct evidence or matter of the case, and that he would hear it on the timeliness and hear it on the merits also at the same time.
  - 0. Okay. Did he indicate at some point that he was going to make a separate decision on the timeliness issue before making a decision on the merits issue?
  - Α. I don't recall.
  - On the merits issue, can you describe for me Q. just in summary fashion what the defense was to the charge that Ms. Wilson was working at Boscov's while she was on sick-leave status?
  - We made the argument that the discipline was untimely, for unjust cause, harsh, punitive, not corrective in nature, in direct violation of the EL 921.
- 24 What's EL 921? Q.



- 19
- 20
- 21
- 22 THE WITNESS: I argued everything.
- 23 BY MR. BERNSTEIN:
- 24 In cases where you learn that the Postal



And you filed a step 1?

2 A. Yes.

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MR. BERNSTEIN: Excuse me a moment.

(Discussion off the record.)

MR. BERNSTEIN: That's all I have.

MR. LEFF: Any questions?

MS. HANNIGAN: No.

## EXAMINATION

BY MR. LEFF:

- 10 Q. Steve, I want to clarify a few things. I want
- 11 | to go back to questions about covered FMLA absence.
- 12 If an employee takes covered FMLA absence tomorrow for
- 13 | a serious health condition, instead of going to the
- 14 doctor or staying home and recuperates, that employee
- 15 | goes, works for Sears, do you think the Postal Service
- 16 | would have grounds to terminate that person if they
- 17 used their approved FMLA absence time to go work
- 18 another job during their Postal Service hours.
- 19 A. They would go after them, yes.
- 20 | Q. And the Union might fight that, correct
- 21 A. We've had it before.
- 22 Q. Basically the Union fights every removal that's
- 23 | out there?
- 24 A. Yes.



- Q. This is a person's job, right?
- ? A. Right.

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- Q. And no matter what the merits are, if it's a removal, the Union is pretty much going to fight it?
  - A. Absolutely.
  - Q. But the mere fact that the Union is fighting it doesn't mean that the Postal Service didn't have cause under the collective bargaining agreement; it's just the Union's position that that should be for an arbitrator to decide, right?
    - A. Absolutely.
  - Q. You said you made a number of arguments in trying to prevail on the grievance challenging

    Ms. Wilson's removal. One of them was that the Postal Service was untimely in delivering the discipline in the first place, correct?
  - A. Correct.
  - Q. Another one was that the Postal Service did not have just cause to remove her, is that correct?
    - A. Correct.
  - Q. Is it correct that there were several arguments under the just cause prong. One of them I think you testified to was that, for the most part, the hours she worked at Boscov's did not overlap the hours she



- 1 | worked at the Postal Service, is that correct?
- 2 A. Correct.
- Q. Is it correct that an another argument you made
- 4 was that, look, she may have taken sick leave from the
- 5 | Postal Service, but when she took sick leave from the
- 6 Postal Service she was actually sick. She went home,
- 7 | took the medication to get better, and therefore
- 8 | couldn't work. So she was not working, taking sick
- 9 | leave, and then working another job which would be a
- 10 | violation?
- 11 A. Correct.
- 12 Q. You also argued that, even if the Postal
- 13 | Service had cause, a termination was too severe of a
- 14 | penalty, is that correct?
- 15 A. Absolutely.
- 16 | Q. What was that EL handbook violation argument
- 17 | that you mentioned?
- 18 A. EL 921 speaks of the way that a supervisor
- 19 | should handle grievances and discipline, and we felt
- 20 | that also was violated being as that the procedural
- 21 | arguments that during the day in court was not a true
- 22 day in court, that it was more of a fact-finding
- 23 | investigation, which is a violation of EL 921.
- 24 And we also made the argument that the



1 | concurring higher official, Carla Van Istendal, sat in

2 | the day in court, and she was the concurring official.

- 3 We said that that was not an independent
- 4 investigation, which Postal Service is mandated by its
- 5 own handbook and manuals to do so. We also made that
- 6 | argument at arbitration.
- Q. Am I missing any major arguments that you made?
- 8 | Corrective, you said the discipline wasn't corrective.
- 9 Was that an argument you made?
- 10 A. It wasn't corrective. It wasn't progressive as
- 11 per the contract.
- 12 Q. And that was all attempts to mitigate the
- 13 | harshness of the discipline. If you couldn't prevail
- 14 on the merits, at least get her back to work?
- 15 A. Yes.
- 16 Q. At any time, either before, during, or after
- 17 | the arbitration hearing, did Ms. Wilson express to you
- 18 | that you should have made different arguments on the
- 19 | merits or additional arguments?
- 20 A. No.
- 21 | Q. Looking at the notice of removal, why is that
- 22 | March 24th, 2004, date not important in your opinion?
- 23 A. Because that's the date that labor prepares it.
- 24 | They sit on it at times before it gets back to the



- Q. Or the date the employee received it?
- 2 A. The date that it was dropped off at his house.
- 3 Q. So it wasn't the date on the discipline, but it
- 4 | was the date that the express mail was delivered?
  - A. Yes.

- 6 Q. So my question is, do you know of any case in
- 7 | which the arbitrator held that a grievance was
- 8 untimely because it was 14 days after the date that
- 9 | the discipline had on it?
- 10 A. Oh, absolutely not.
- 11 Q. In your experience, the tolling date begins
- 12 when the employee receives the discipline, whether
- 13 | it's by hand or by mail?
- 14 A. Correct.
- 15 Q. Did you have any indication that Ms. Wilson
- 16 | received the notice of removal prior to April 6, 2004?
- 17 A. No.
- 18 | Q. Did Ms. Wilson ever tell you that she received
- 19 | notice of removal by first class mail?
- 20 A. No.
- 21 Q. Your understanding, at what step did the Postal
- 22 | Service raise the timeliness issue?
- 23 A. Step 2.
- 24 Q. Did you handle the step 2 of this grievance?



- Q. What did working on the grievance entail?
- A. I did a search on LexisNexis.
- Q. What did you search on LexisNexis?
- A. Removals that fit the criteria of Ms. Wilson.
- I even did a -- it took me a while to dig it up. MSPF6 case that was similar to Melinda's in Wilmington.
- Q. But let's take this one at a time. Is it correct that the APWU catalogs Postal Service employee arbitration cases in a LexisNexis computer database?
- 10 A. Yes.

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- 11 Q. So you searched that database?
- 12 A. Yes, I did.
- Q. MSPB, does that stand for Merit Systems
- 14 | Protection Board?
- 15 A. Yes, it does.
- Q. Certain Postal Service employees have cases before the Merit System Protection Board, correct?
- 18 A. Correct.
- 19 Q. So you searched for those cases also.
- What else did you do?
- A. I went through case files. I went to the CBRs, which is collective bargaining reports which APWU puts out to arbitration advocates. It's in paper form
- 24 | where you go through and find similar cases to the



- 1 ones that you're looking for.
- 2 | O. What else did you do?
- 3 A. Went to the ELM, went to the FMLA act.
- 4 Q. Did you prepare a request for information?
- 5 A. Yes, I did.
- 6 | Q. Tell me about that.
- 7 A. At step 1 I requested information from the
- 8 | supervisor Joylyn Pascual that I did the step 1 with,
- 9 | asking for the records, and presented it to her.
- 10 Q. And did you do all this before you filed the
- 11 | step 1?
- 12 A. This was all -- the investigation?
- 13 Q. Yes.
- 14 A. Yes.
- 15 | Q. Why?
- 16 A. You want to make sure it's right.
- 17 Q. If, in your opinion, you've had time to file
- 18 | the grievance, have you ever filed a grievance before
- 19 doing an investigation on a removal.
- 20 A. Not a removal, no.
- 21 Q. And why not?
- 22 A. Because they're so complicated, and there's so
- 23 | much at stake.
- 24 Q. And it's possible if you don't include things



- and she was telling me that her and her husband were having family problems and that she always didn't go check her cluster box.
  - Q. That's her mailbox?
  - A. Yes. And that she went back and forth, and that was when she found out that it was all in there, the 5th, and she was going down to get it all.
- Q. This was during your prearbitration
  preparation?
- 10 A. Yes.

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- Q. Did Ms. Wilson at that point tell you that she had received the first class mailing of the notice of removal on March 30th or 31st?
- A. I don't know if she told me that date. I found out for sure that I know was when Mr. Keen presented the EEO investigation paperwork there that's --
  - Q. I'll get to that in a second before the arbitration here, did you know that Ms. Wilson had received notice of removal prior to that certified letter on April 6?
- 21 A. No.
- Q. I want to show you Wilson Exhibit Number 3
  which is the information for pre-complaint counseling.
  During Ms. Wilson's testimony she stated that she had



- 1 | wrote that on March 31st that she received a notice of
- 2 removal. Did you see this document, exhibit 3 to
- 3 Ms. Wilson's deposition, prior to the arbitration
- 4 | hearing?

- A. No.
  - Q. Did you try to keep this document out?
- 7 A. Absolutely. I objected that Mr. Keen obtained
- 8 this with unclean hands, and the arbitrator ruled that
- 9 he would let it in for what it was worth as a
- 10 | credibility issue.
- 11 Q. Do you recall, during the hearing, did
- 12 | Ms. Wilson testify that the first time she received
- 13 | the notice of removal was on April 6 when she signed
- 14 | for the certified letter, if you recall.
- 15 A. Yeah. Right now I don't recall that.
- 16 Q. Do you think that the arbitrator in your
- 17 | opinion that the arbitrator relied on this information
- 18 | for pre-complaint counseling document in determining
- 19 | that Ms. Wilson had noticed the removal on March 31st?
- 20 A. Oh, yes.
- 21 MR. LEFF: If you'll allow me, I'd like to
- 22 | authenticate a few of the grievance documents through
- 23 | Mr. Collins, just to save on doing that declaration.
- MR. BERNSTEIN: Sure.



- MR. LEFF: Hopefully I can get through these quickly.
- 3 Can you mark this.
- 4 (Collins Deposition Exhibit 1 was marked
- 5 | for identification.)
- 6 BY MR. LEFF:
- 7 Q. Mr. Collins, take a look at that document.
- 8 It's been marked exhibit 1. Can you tell me what that
- 9 | is?
- 10 A. That was my bullet points that I was going
- 11 | through of my arguments that I was going to make in
- 12 defense of Ms. Wilson.
- 13 Q. Okay. And 4/6/04, it says, sign for certified
- 14 | letter. Can you tell me about that, right-hand
- 15 | corner?
- 16 A. Right. I wrote that that's the date. Tell me
- 17 | when the 14 days would start.
- 18 Q. Mr. Collins, if you had known that Ms. Wilson
- 19 | had received the first class mail letter seven days,
- 20 | six or seven days earlier than April 6, 2004, would
- 21 | that have changed your belief of when the time limits
- 22 | for filing a grievance had begun?
- 23 A. If I had known?
- 24 Q. Yes.



Steven Collins - Leff 47 1 Α. Yes. 2 0. So if Ms. Wilson had told you that she received 3 notice of removal by first class mail on March 31st, 4 you would have believed that the 14 days' time limit had begun on March 31st? 5 6 Α. Yes. 7 0. And from your discussions with Ms. Wilson, you 8 believe that the first time she received the notice of 9 removal was April 6, is that correct? 10 A. Correct. 11 MR. LEFF: Can you make this exhibit 2? 12 (Collins Deposition Exhibit 2 was marked 13 for identification.) 14 BY MR. LEFF: 15 0. Can you tell me what exhibit 2 is, please? 16 This is a request of information that I've Α. 17 presented to Joylyn Pascual during the step 1 hearing. 18 Q. Is that something you prepared prior to the 19 filing the step 1 grievance? 20 Α. Yes. 21 Q. Why did you do that? 22 Α. This is information I need to go through to 23 make more arguments and prove my case.



I want to show you from Ms. Wilson's exhibits.

24

Q.



Union's bargaining unit at this time?

About 660.

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Α.

51 This is what we consider additions, 1 2 corrections, or deletions. This is, after we receive 3 the denial, from the post service, we have five days to rebut or make any other arguments than what they've 5 contended or to add anything that needs to be added. 6 Q. And is that something that Mr. Stinson 7 prepared? Yes. Α. And so that is rebutting the Postal Service 9 0. 10 step 2 denial and any final arguments that the Union 11 wants to make? 12 Α. Yes. 13 And to your knowledge, Mr. Stinson challenged 14 the Postal Service timeliness --15 Α. Yes. 16 -- assertions? Q. 17 Yes. Α. 18 Did you prepare and read an opening statement 19 during the hearing? 20 Yes, I did. Α. 21 Did you submit arbitration awards to the 22 arbitrator in support of both the timeliness issue and 23 the merits issue?



24

Α.

Yes, I did.